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UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO EASTERN DIVISION

MARK SMALL, et al. :

CASE NO. 1:06CV1721

:

Plaintiff, : JUDGE O'MALLEY

:

v. : <u>ORDER</u>

:

FRANK REGALBUTO, et al.,

:

Defendants. :_____

Before the Court is *Plaintiffs' Motion to Partially Lift Stay for Purposes of Consideration of Plaintiffs' Partial Motion for Summary Judgment* (Doc. 39). Plaintiffs' made the same motion to the Court orally during the November 14, 2006 hearing. At that time, the Court indicated it would consider lifting the stay for the limited purpose of addressing *Plaintiffs Partial Motion for Summary Judgment* (Doc. 26). Plaintiffs' motion for partial summary judgment addresses only the narrow issue of Defendants' alleged breach of certain specified fiduciary duties via the plaintiffs and other participants in the IPOF fund. The Court finds that the possible determination of that issue at an early stage in the proceedings could expedite the resolution of the case. Plaintiffs motion to lift the stay, moreover, has not been opposed on any substantive grounds.

Accordingly, Plaintiffs' Motion to Partially Lift Stay for Purposes of Consideration of Plaintiffs' Partial Motion for Summary Judgment (Doc. 39) is **GRANTED**. Defendants are **ORDERED** to respond to Plaintiffs Partial Motion for Summary Judgment (Doc. 26) within thirty (30) days of the date of this Order. Thereafter, Plaintiffs may reply to Defendants'

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opposition in accordance with the Local Rules. The stay issued by the Court on November 15, 2006 remains in place as to all aspects of the case other than the issues presented by Plaintiffs' Partial Motion for Summary Judgment.

Defendants' Motion to Strike Plaintiffs' Motion to Partially Lift Stay for Purposes of Consideration of Plaintiffs' Motion for Partial Summary Judgment (Doc. 41) is **DENIED.**

IT IS SO ORDERED.

s/ Kathleen M. O'Malley
KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

DATED: February 1, 2007